

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 04 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DARRELL REED BLACKHAM,

Petitioner,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

No. 06-73842

Tax Ct. No. 05-7849

MEMORANDUM*

Appeal from a decision of the
United States Tax Court
Diane L. Kroupa, Judge, Presiding

Submitted July 22, 2008**

Before: B. FLECTCHER, THOMAS and WARDLAW, Circuit Judges.

Darrell Reed Blackham appeals pro se from the tax court's order granting summary judgment for the Commissioner. We have jurisdiction under 26 U.S.C.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

§ 7482(a)(1). We review de novo, *Miller v. Comm'r*, 310 F.3d 640, 642 (9th Cir. 2002), and we affirm.

The tax court properly granted summary judgment because no triable issue of fact existed regarding the appropriateness of the tax deficiencies and penalties levied against Blackham. *See* Tax Court Rule 90(c) (stating that requests for admission to which a taxpayer fails to respond are deemed admitted); *Smith v. Comm'r*, 800 F.2d 930, 935 (9th Cir. 1986) (affirming under Tax Court Rule 90(c)).

We grant the government's motion for sanctions and refer the case to the Appellate Commissioner for a determination of the appropriate amount. *See* Fed. R. App. 38 (allowing award of damages for frivolous appeal). The Commissioner has discretion to require any supplemental briefing.

AFFIRMED.